

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Inbound Competitive Multi Service Agreements
With Foreign Postal Operators
Canada Post Corporation—United States Postal Service
Bilateral Agreement (MC2010-34)
Negotiated Service Agreement

Docket No. CP2016-57

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE NOTICE OF FILING FUNCTIONALLY EQUIVALENT INBOUND
COMPETITIVE MULTI-SERVICE AGREEMENT WITH A FOREIGN POSTAL
OPERATOR

(December 29, 2015)

The Public Representative hereby provides comments pursuant to Order No. 2895.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on the Postal Service's Notice of its entry into an additional bilateral agreement for inbound competitive services with the Canada Post Corporation (Canada Post).² The Postal Service seeks to include the inbound portion of a bilateral agreement with Canada Post (Canada Post 2016-2017 Agreement) within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. Notice at 1.

In Order No. 546, the Commission approved the addition of the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product to the competitive product list, and included within that product an agreement with Koninklijke

¹ PRC Order No. 2895, Notice And Order Concerning Additional Foreign Postal Operators 1 Negotiated Service Agreement (With Canada Post Corporation), December 17, 2015.

² Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator, December 16, 2015 (Notice).

TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement).³ Since approving the TNT agreement, the Commission has approved additional Multi-service Agreements with Foreign Postal Operators.⁴ In this proceeding, the Postal Service designates the TNT Agreement as the baseline agreement in this docket. *Id.* at 2.

The Canada Post 2016-2017 Agreement establishes prices and classifications for the delivery of inbound parcels and Express Mail Service (EMS) in the United States. Notice at 3. The 2016-2017 Agreement is intended to become effective January 1, 2016, and remain in effect for a period of two years unless terminated sooner. *Id.*; *id.*, Attachment 2, at 7-8.

On December 22, 2015, Chairman's Information Request (CHIR) No.1 asks the Postal Service to clarify certain elements of the multi-service agreement.⁵ These elements concern the differences between expedited and commercial priority products. CHIR No. 1, Question 1. It also asks the Postal Service to confirm that southbound service parcels are not included within this agreement, and whether a distinction exists between the EMS Cooperative Standard Agreement and the 2015 Pay-For-Performance Plan. *Id.* Questions 2 and 3.

COMMENTS

The Public Representative has reviewed the Canada Post 2016-2017 Agreement and the supporting financial model filed under seal that accompanied the Postal Service's Notice. Based upon that review, the Public Representative concludes that the Canada Post 2016-2017 Agreement is functionally equivalent to the Canada Post 2012-2013 Agreement. Moreover, the negotiated inbound rates offered in the Canada Post 2016-2017 Agreement are likely to generate sufficient revenue to cover attributable costs.

³ PRC Order No. 546, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, Docket Nos. MC2010-34 and CP2010-95, September 29, 2010.

⁴ 2014 ACR Library Reference PRC-LR-NP2

⁵ Chairman's Information Request No. 1, December 23, 2015 (CHIR)

Functional Equivalence. The Postal Service asserts that the Canada Post 2016-2017 Agreement is substantially similar to the inbound portion of the baseline agreement in terms of the products being offered under the contract and the contract's cost characteristics. Notice at 2. Moreover, the 2016-2017 Agreement includes the same competitive services (inbound Air Parcel Post and EMS) as the TNT Agreement.

However, the Postal Service identifies differences between the Canada Post 2016-2017 Agreement and the baseline agreement, including the following additional articles: Article 4, Quality of Service; Article 5, Rates; Article 6, Terms for the Delivery of EMS Items; Article 7, Terms for Multi-Services Agreement; Article 8, Settlement Principles; Article 10, Audit; Article 11, Meetings; Article 13, Procedure respecting USPS Postal Regulatory Commission Filings; Article 17, Waiver; Article 22, Termination; Article 23, Negotiated Commercial Arrangement; Article 24, Compliance with Applicable Laws when Operating in the Other Party's Country; Article 25, Application of the *Universal Postal Convention*; Article 26, Survival of Various Articles of the *1981 Postal Convention*; and Article 27, Previous Bilateral Agreement Superseded.

The Postal Service also identifies differences in the attachments to the 2016-2017 Agreement compared to the baseline agreement, including the following: Attachment 2, Scanning and On-Time Quality of Service Measurement and Pay-For-Performance; Attachment 3: Modified Agreement on the International Exchange of EMS Items Between the U.S. Postal Service and Canada Post; Attachment 4, a Multi-Services Agreement concerning the provision of International Direct Entry and Domestic Entry Services; Attachment 6, Confidentiality Provisions; Attachment 7, Product Development and Collaborative Initiatives; Attachment 9, an agreement concerning the exchange of International Business Reply Service and International Merchandise Return Service; and Attachment 10, Customer Service.

The Postal Service "does not consider that the specified differences affect either the fundamental service the Postal Service is offering or the fundamental structure of the agreements." Notice at 7-8. The Public Representative agrees that these differences do not alter the conclusion that the Canada Post 2016-2017 Agreement is

functionally equivalent to the baseline agreement. Like the baseline agreement, the Canada Post 2016-2017 Agreement offers rates for inbound Air Parcel Post and EMS, and therefore exhibits similar cost or market characteristics.

39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service must demonstrate that the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product covers attributable costs, which precludes the subsidization of competitive products by market dominant products and makes an appropriate contribution to the institutional costs of the Postal Service. In this proceeding, the Postal Service's financial model does not demonstrate that the addition of the Canada Post 2016-2017 Agreement results in the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product as a whole covering costs as required by 39 U.S.C. § 3633(a)(2). However, the Postal Service's financial model indicates that the negotiated rates in the Canada Post 2016-2017 Agreement will generate sufficient revenues to cover its attributable costs, and therefore will not degrade the cost coverage of the product.

The Postal Service responded to CHIR No. 1 on December 28, 2015, clarifying that Commercial Priority streams have different entry and preparation requirements compared to Expedited streams. CHIR No.1, Question 1. The Postal Service confirms that surface parcels are not part of this agreement. *Id*, Question 2. They also clarify the differences between the EMS Cooperative Standard Agreement and the 2015 Pay-For-Performance Plan, and they included a copy of the EMS Standard Agreement for reference. The Public Representative finds that these responses do not alter the functional equivalence or cost coverage or the Agreement.

CONCLUSION

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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